

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B02  
PLR-125998-10  
Date: December 2, 2010

### LEGEND

X =

IRA =

a =

\$n =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This responds to a letter dated June 21, 2010, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated in State on Date 1. X made an election to be treated as an S corporation effective Date 2. X's election was inadvertently invalid on Date 2 because IRA, an ineligible shareholder under § 1361(c)(2)(A), held stock in X instead of a. On Date 3, IRA became a permissible shareholder of X under § 1361(c)(2)(A)(vi).

X represents that the invalid election was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election on Date 2 was invalid, and thus not effective. We conclude that this invalid election was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as making an effective S corporation from Date 2 and thereafter, provided X's S corporation election was otherwise valid and provided that the election was not otherwise terminated under § 1361(d).

As an adjustment under § 1362(f)(4), this ruling is conditioned on the payment of \$n with a copy of this letter to the following address: Internal Revenue Service, Cincinnati Service Center, 201 West Rivercenter Blvd., Covington, KY 41011, Stop 31, Terri Lackey, Manual Deposit. This payment must be sent no later than Date 4. This adjustment is based on the treatment of a, the beneficiary of IRA, as the shareholder of X from Date 2 to Date 3 during which X reported a net gain.

The shareholders of X must include in income their pro rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided by § 1368. This ruling is contingent upon X and its shareholders filing any original or amended returns and making such adjustments that are necessary to properly reflect the reporting of X's items of S corporation income. Any such original or amended returns must be filed within 120 days of the date of this letter. A copy of

this letter should be attached to each return. If X or its shareholders fail to treat X as described above, this letter ruling shall be null and void.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code, including whether X was or is a small business corporation under § 1361(b).

This ruling is directed only to the taxpayer that requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Melissa Liquerman  
Branch Chief, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes